

45 Phil. 211

[G.R. No. 20644. October 08, 1923]

**JUAN PHEE, PLAINTIFF AND APPELLANT, VS. LA VANGUARDIA, INC.,
DEFENDANT AND APPELLEE.**

D E C I S I O N

STATEMENT

The defendant is the owner and publisher of the newspaper known as "Taliba," which is printed in Tagalog. In its issue of May 2, 1922, appeared an article which, translated into English, reads as follows:

"CHINAMAN THAT STABBED ANOTHER WITH A KITCHEN KNIFE

"Because of the girl named Eustaquia de la Cruz, with whom Victoriano Morales lived as his *querida*, this (Victoriano Morales) was brought to the General Hospital for wounds inflicted by a Chinaman named Juan Phee on his fore-head, neck and left shoulder.

"This bloody occurrence occurred at Calle Elcano No. 2137, Binondo, at about 7:30 last night.

"According to the investigation made it was discovered that Eustaquia has been living with the said Chinaman for 17 years and as a result seven children were born to them. During the latter part of last month Eustaquia came to know that Juan Phee has wife in China, and so she left said Juan Phee to live with a man named Victoriano (Morales).

"Last night the Chinaman made a visit to the house where Eustaquia was living and found Victoriano talking with Eustaquia. Phee felt jealous and stabbed

Victoriano with his knife, producing as a consequence several wounds.

“The Chinaman was arrested and charged with frustrated homicide.”

May 3d, the plaintiff brought this action alleging the publication of the article that it was libelous, defamatory and untrue, by reason of which he was damaged in the sum of P10,000, for which amount he prays judgment with costs.

May 20, 1922, the defendant filed an answer, in which it denied each and every one of the allegations of the complaint.

As a result of the trial upon such issues, the court rendered judgment in favor of the defendant and for costs. Plaintiff filed a motion for a new trial on the ground that the evidence was insufficient to justify the decision, and that it was against the law, which was overruled. From which ruling the plaintiff appeals, assigning the following errors:

- “1. The court erred in refusing to find for plaintiff in accordance with the prayer of the complaint.
- “2. The court erred in admitting Exhibit 1 of defendant as a complete defense of defendant from paying damages.
- “3. The court erred in finding that plaintiff did not ask for retraction of the libelous article published.
- “4. The court erred in finding that the defendant acted without malicious intent.
- “5. The court erred in finding that the damages prayed for in the complaint have not been proven.
- “6. The court erred in sustaining that the plaintiff was not injured in this case.
- “7. The court erred in absolving the defendant from

damages.”

JOHNS, J.:

Under all of the authorities, the article was libelous *per se*.

Although newspapers are in a privileged class, and the freedom of the press is recognized by all the courts, that does not give any newspaper the legal right to publish an article which is libelous *per se* about any person. Although the plaintiff did not make any formal demand on the defendant for the retraction of the article, it appears that he went to the office of the newspaper and told the employees that it was a case of a mistake in identity, and that he was not the person who committed the acts alleged in the published article. The defendant did not pay any attention to what he said and ignored him, and never at any time published an article of retraction, or admitted that it was a mistake. It is true that the complaint was filed upon the following day, but it is also true that the defendant could have acknowledged its error at any time after the complaint was filed. That was not done. The real defense is that the plaintiff was not injured by the publication of the article, and, for such reason, he was not entitled to any damage, and, in legal effect, that was the finding of the trial court.

It appears that at previous times, the plaintiff had been convicted of the crimes of *estafa*, theft and violation of the Opium Law, for which he had served his time in Bilibid. But, having suffered the penalties, he was then a free man. That defense would tend to destroy his character and reputation, and would go to the mitigation of damages, but would not be a complete defense to the action, and would not legally justify the defendant in the publication of an article libelous *per se*.

At the trial the defendant contended that the publication of the article was an honest mistake. But even so, that would be considered only in mitigation of damages where the article is libelous *per se*. Under all of the authorities, where the publication of the article is libelous *per se*, an honest mistake is not a complete defense. Neither in such a case is the plaintiff required to introduce evidence of actual damages, as a condition precedent to the recovery of some damages. Where the article is libelous *per*

se, the law implies damages. In such a case evidence of an honest mistake or the want of character or reputation of the party libeled goes only in mitigation of damages.

In the instant case, after the attention of the defendant was called to the fact that a mistake had been made, no effort was made to correct the mistake. In legal effect, the defendant contends that, because the plaintiff had been convicted of previous crimes, that would constitute a complete defense to the action. That is not the law. It matters not how low any person may be, no newspaper has any legal right to publish an article about him which is libelous *per se*.

The record shows that even though the article was libelous *per se*, the plaintiff has not suffered any substantial or material damages to either his feelings or reputation.

Section 11 of Act No. 277, known as the Libel Law, provides:

“In addition to the criminal action hereby prescribed, a right of civil action is also hereby given to any person libeled as hereinbefore set forth against the person libeling him for damages sustained by such libel, and the person so libeled shall be entitled to recover in such civil action not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeler and an example to others. * *

*”

Applying that section, the judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff and against the defendant for the sum of P50, together with costs in favor of the plaintiff and against the defendant in both this and the lower court. So ordered.

Araullo, C.J.,

Johnson, Street, Malcolm, Avanceña, and Romualdez, JJ., concur.

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